



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1992

Mr. Byron Jay Lewis  
Henrichson & Lewis  
P. O. Box 1258  
Edinburg, Texas 78540-1258

OR92-643

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17336.

You explain that the City of Edinburg has received a request for an investigative file concerning an examination of the city's public works department. You have forwarded to us for review an intra-agency memorandum that is responsive to the request.<sup>1</sup> You have marked the portion of the memorandum that you seek to withhold pursuant to section 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 538 (1990) at 2. Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation, cannot be withheld under section 3(a)(11). *See generally* Open Records Decision No. 213 (1978).

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<sup>1</sup>You advise that the notes responsive to the request have been released to the requestor. Thus, this ruling does not address their availability under the act.

We have reviewed the intra-agency memorandum, and we agree that you may withhold the marked portion pursuant to section 3(a)(11). Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-643.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/lmm

Ref.: ID# 17336

Enclosure: Submitted documents

cc: Ms. Jessie L. Pulcher  
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(w/o enclosures)